UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/811
25 July 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 811

Case No. 923: HALLET

Against: The Secretary General of the International Civil Aviation Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, on 30 May 1996, George J. Hallet, a former staff member of the International Civil Aviation Organization (hereinafter referred to as ICAO), filed an application requesting the Tribunal, inter alia:

"...

Plea 4. My OPAS [Operational Assistance] work contract was breached ...

...

(b) ... I request the Tribunal to rule in my favour and to specify appropriate acknowledgement from the Organization.

Plea 5. I am claiming the sum of US$5,000, categorically, as compensation for the amount I was deprived of (...) because of my accelerated repatriation on 29 February 1992, and for the additional cost of living expenses incurred by the inadequate cooking and laundry facilities while occupying Unit T21A, Red Sea Compound, Jeddah. I am requesting the Tribunal [to] rule in my favour and to specify that the Organization compensate me accordingly.

> Plea 6. I am contesting the validity of much of the contents of the letter dated 16 July 1995 (...) from ... [the] Assistant to the Project Manager. ... I am requesting the Tribunal to consider my explanatory statements relative to this plea and to rule in my favour."

Whereas the Respondent filed his answer on 29 October 1996;

Whereas the Applicant filed written observations on 9 May 1997;

Whereas the facts in the case are as follows:

The Applicant entered the service of ICAO on 10 May 1983, as Co-Manager, Air Traffic Services, Communications/Operations (COM/OPS), at the P-5, step III level, on a one year operational assistance (OPAS) appointment in Jeddah, Saudi Arabia, on the basis of an agreement concluded on 4 January 1976 between the Saudi Arabian Government and the United Nations Development Programme. The Applicant's contract of employment stipulated that his employer would be the Saudi Arabian Government, but that his services would be paid for by ICAO. The Applicant's appointment was successively extended until 9 May 1992, the date on which he was separated from service. At the time of the events which led to the appeal, the Applicant was Senior COM/OPS and Procedures Expert/Instructor, OPAS, at the P-5, step VIII level. On 6 January 1992, the Applicant signed a letter expressing his wish to extend his contract if renewal were to be offered.

On 12 January 1992, the Project Manager informed the Applicant that "on the basis of present requirements of the Government", ICAO would be unable to extend his contract beyond 9 May 1992. Taking into account accrued annual leave, his last day of duty was estimated to be 18 January 1992. The Saudi Arabian authorities requested the Project Manager to make arrangements for the Applicant "to continue on duty throughout the period of his accrued annual leave to the maximum extent possible prior to the

expiration of his contract on 9 May 1992." On 15 January 1992, the Project Manager requested from the Government authorities the Applicant's work programme, were he to work through his annual leave. This was submitted to the Project Manager on 20 January 1992. The Applicant was subsequently allowed by ICAO to work until 29 February 1992.

On 2 February 1992, the Applicant wrote to the Director, Technical Cooperation Bureau (D/TCB), stating that his "seniority assignment to a new hcuse at Continental Village was cancelled" and that he had been verbally assigned to a one-bedroom apartment at "Red Sea T Compound housing". He claimed that, contrary to the provisions of his contract, the housing he was "being directed to accept" was not subsidized by the Organization, but rather that he was subsidizing the Organization since he was being charged more for rent than the Organization was paying. He also complained that by requesting his work programme, the Project Manager "pre-empted the Government's prerogative", thereby making the Applicant responsible to an "'authority external to the Government'" in violation of his contract. In a reply dated 3 February 1992, from the Project Manager, the Applicant was informed that "you looked at the apartment in the Red Sea 'T' Compound during the week of 18 January 1992 and advised us on 22 January 1992 that it was acceptable to you."

On 10 February 1992, the Applicant wrote to the Secretary General, appealing what he considered to be breaches of his OPAS employment contract. The Applicant stated that he had been verbally threatened by the Project Manager as a result of writing directly to the D/TCB, on 2 February 1992, instead of communicating directly with the Project Manager. The Applicant also noted that he had been "forced, under duress, to accept a sub-standard one-bedroom flat in lieu of [his] seniority assignment of a new three-bedroom house in Continental Village"; he alleged that he was threatened with repatriation upon termination of his current housing assignment if

he did not accept. He reiterated that he was subsidizing the Organization in respect of housing charges, and that his contract had been breached when the Project Manager requested his work programme.

In a reply dated 18 March 1992, the Secretary General advised the Applicant, inter alia, of the criteria behind the new-housing assignments, and noted that the Applicant had not in fact subsidized the Organization since he was paying a rental of 13.5%, like all ICAO staff members or OPAS officers.

On 28 November 1992, the Applicant lodged an appeal with the Advisory Joint Appeals Board (AJAB).

On 7 February 1996, the AJAB adopted its report. Its findings and conclusions read, in part, as follows:

"7. FINDINGS

7.1 The Board notes the Appellant:

(a) Claims:

(1) Compensation, at the rate of US$5,000, for expenses incurred during his living in Unit T 21 A of the Red Sea Compound and for lost remuneration on his alleged accelerated repatriation; and

(2) an apology for moral injury caused by his treatment by the Project Manager.

(b) Seeks acknowledgement that his interpretation of the administrative procedures as they apply to an OPAS expert was appropriate.

7.2 ...

7.3 In respect of the Appellant's first claim, the Board notes that the Appellant did not present documented evidence on the problems in Red Sea Unit T 21 A which he had enumerated to the Board in support of his contention that the housing was sub-standard. Nor did the Appellant submit

documentation in support of his claim that he had incurred additional expenses as a result of the alleged sub-standard housing conditions in Red Sea Unit T 21 A.

7.4 ...

7.5 The Board notes that the burden of proof is on the Appellant and, in the absence of any conclusive evidence to support the Appellant's claims, the Board is unable to reach any conclusions.

7.6 The Board notes that the calculation of rental subsidy for Red Sea Unit T 21 A and the amount of rental deduction applied to the Appellant's salary was in line with the provisions of Field Personnel Instructions Manual (PI C.7) and application of the United Nations formula using the fixed percentage for Saudi Arabia of 13.5%.

7.7 The Appellant stated that his contract had been terminated and his repatriation accelerated, causing loss of salary. The Board notes that the documented evidence demonstrates that the Appellant's contract was not prematurely terminated. The Board also notes that the Appellant was given additional time past the calculated date of separation, 18 January 1992, resulting in his receiving salary from 18 January until 29 February 1992 rather than taking annual leave. The misunderstanding may have arisen from the request for the Appellant to take annual leave during the remainder of his contract in accordance with Field Personnel Instruction D.1 4 and Field Service staff rule 4.2 (c).

7.8 The Board finds that the relevant rules and practices were followed in respect of the non-renewal of the Appellant's contract, leave entitlements and repatriation, and that he received the remunerations owing to him.

7.9 Regarding the Appellant's second claim, the Appellant contends that his housing reservation in the Continental village was cancelled arbitrarily and that he was coerced into accepting sub-standard housing by the withholding of information on other available quarters. These contentions are contradicted by statements from the Project Coordinator and Assistant Project Coordinator who both contend that the Appellant's move to the Continental Village had only been cancelled after it was learnt that his (the Appellant's) contract would not be renewed and that he had been offered the choice of three other locations which were available for short term occupancy.

7.10 The Appellant further contends that decisions and actions taken by the Project Coordinator were detrimental to his interest and adversely affected him.

7.11 The Board notes that the burden of proof is on the Appellant and, in the absence of any conclusive evidence to support the Appellant's claims, the Board is unable to reach any conclusions.

8 CONCLUSIONS

8.1 Having considered the merits of the case, the Board unanimously concludes that the Appellant's case should be rejected."

On 11 March 1996, the Secretary, AJAB, transmitted to the Applicant a copy of the AJAB's report and the Secretary General's decision of 7 March 1996 thereon. This decision reads, in part, as follows:

"I am in full agreement with the findings and conclusions of the Board, and have therefore endorsed them."

On 30 May 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to move the Applicant to the Red Sea "T" Compound was a breach of his OPAS contract, since the housing unit was substandard and the Applicant effectively subsidized ICAO for the cost of his housing.

2. The request by ICAO for the Applicant's work programme also breached his employment contract since, by so doing, ICAO made the Applicant subject to an "authority external to the Government", in violation of the terms of his contract.

Whereas the Respondent's principal contentions are:

1. The Applicant was not threatened or coerced into moving to the Red Sea Compound; in any event, the Organization had no legal obligation to provide him with housing.

2. The Applicant was properly charged for his occupancy of Red Sea Unit T 21 A in accordance with the provisions of his contract, the rules and practices of ICAO and with the UN common system policies and procedures.

3. The plea that ICAO should not have been provided with the Applicant's work programme is not an appealable administrative decision.

The Tribunal, having deliberated from 3 to 25 July 1997, now pronounces the following judgement:

I. The Applicant appeals against a decision of the Respondent dated 7 March 1996, accepting the findings and conclusions of the Advisory Joint Appeals Board dated 7 February 1996.

II. The Applicant's appointment was to expire on 9 May 1992. In response to a request from the Saudi Arabian Government, ICAO agreed to allow the Applicant to work through part of his period of accrued annual leave, until 29 February 1992. Prior to informing the Applicant that his appointment would not be renewed after 9 May 1992, ICAO had proposed that the Applicant move to the Continental Village Compound, with effect from 30 January 1992. On 21 January, the Applicant learned that his housing assignment had been changed to the Red Sea housing unit. After inspecting the unit, the Applicant found it unacceptable, but he informed the Acting Project Manager that he would accept it if nothing else were available.

III. The Applicant alleges that the Organization was obliged to provide him with adequate, subsidized housing but instead forced him to accept a unit that was below the standard of housing provided to all other OPAS/ICAO personnel. The Tribunal notes that the Applicant's employment contract, as amended on 1 May 1984, provides that:

> "6. The Organization [ICAO] shall endeavour to provide the Officer with subsidized housing for the entire duration of the appointment.
>
> (...)
>
> Alternative housing arrangements may be made by the Officer only if the Organization cannot provide him with subsidized housing or in exceptional circumstances."

The Tribunal finds that the Organization was under no legal obligation to provide the Applicant with housing, but only that it had undertaken to endeavour to do so. The Applicant therefore had the option to search for alternative housing if he did not find the offered arrangements satisfactory. Further, the Tribunal notes that the Applicant admits informing ICAO that he would accept the unit in the Red Sea compound if nothing else were available. Although he alleges that he was coerced into accepting the unit, the Applicant has failed to provide evidence in support of his claim.

IV. Regarding the Applicant's contention that his housing was below the standard provided to other personnel, the Tribunal accepts the Respondent's explanation. According to the Administration, given the fact that funding for the project had not been cleared, housing was allocated not on the basis of seniority, but rather by taking into account such other factors as the length of a staff member's contract, the likelihood of its extension and the envisaged date of his or her separation. Further, the Applicant has not provided evidence in support of his claim for US$5,000 as

compensation for additional living expenses incurred as a result of the inadequacy of the Red Sea housing unit.

V. The Applicant alleges that, in contravention of his employment contract, the deductions made from his salary for Unit T 21 A, Red Sea Compound effectively forced him to subsidize ICAO with respect to rental charges. The Tribunal notes that a monthly rental deduction of Saudi Riyals (SR) 3,172 was made from the Applicant's salary. The record is unclear with respect to the actual monthly cost of the unit the Applicant occupied: the Respondent's documents indicate a cost of SR 3,300, whereas the Applicant claims that the unit cost SR 3,000 per month. However, the Tribunal does not find it necessary to resolve this disparity, since it considers that the decisive fact is that, like all ICAO or OPAS members, the Applicant was paying housing charges equal to 13.5% of the total amount of his net salary, post adjustment and assignment allowance, in accordance with article II, paragraph 6 and Annex 1, subsection (1) of his contract.

VI. The Tribunal next examined the Applicant's allegation that his housing assignment was arbitrarily limited to Unit T 21 A of the Red Sea Compound and that information on other available accommodation was deliberately withheld by the Project Manager. The Respondent contends that this claim is not receivable by the Tribunal since it is not an administrative decision. The Tribunal notes that the JAB considered the merits of this claim. The Tribunal finds that, although the actions in question do not stricto sensu constitute an administrative decision, if they were in fact taken in violation of the Respondent's contractual obligations or of the Field Staff Service Rules (FSSR) and/or the Field Operation Manual (FOM), the Tribunal may rule on them. However, the Tribunal finds that the Applicant has not produced sufficient evidence in support of this claim.

VII. The Applicant has requested the Tribunal to clarify the differences between an OPAS expert and various ICAO posts. The Respondent contends that it would not be proper for the Tribunal to make general pronouncements as to the distinctions between different posts. In this connection, the Tribunal recalls that it has held in the past that the FSSR and the FOM apply to OPAS personnel (Cf. Judgements No. 149, Mirza (1971) and No. 733, De Garis (1995)). Notwithstanding the foregoing, the Tribunal emphasizes that it will rule on such matters only insofar as they relate to the contractual interests of the Applicant.

VIII. The Tribunal notes that article III, paragraph 1 of the Applicant's contract stipulates that:

> "The Officer shall be responsible to the Government. In the performance of his duties, he shall neither seek nor accept instructions from ... any other authority external to the Government."

Article VII, paragraph 3, provides:

> "... any relevant matter for which no provision is made in this contract shall be settled according to the administrative practices of the Organization."

The Tribunal further notes that ICAO paid the Applicant's salary. Having taken the foregoing into consideration, the Tribunal finds that, with respect to the Applicant's professional duties, he was responsible to the Saudi Arabian Government. However, with respect to administrative and financial matters, he came under the authority of the ICAO Project Manager.

IX. The Applicant contends that his employment contract was breached when ICAO requested the Saudi Arabian Government to submit a work programme. The Tribunal considers it both necessary and appropriate that the duties attaching to a post such as the

Applicant's are established by consultation between the host Government and the Organization. This is particularly true when the Organization is responsible for certain aspects of the financial management of a project and must therefore ensure that there are sufficient funds to cover the extension of employment contracts. Accordingly, the Tribunal rejects this claim.

X. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN
Vice-President, presiding

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary